

DEPARTMENT OF STATE REVENUE

Revenue Ruling #99-02 ST

March 16, 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax – Purchase of Meals and Banquets, and the Rental of Hotel
Conference Rooms

Authority: IC 6-2.5-5-16

The taxpayer requests the Department to rule on the application of sales/use tax to the purchase of meals and banquets, and to the rental of hotel conference rooms by the taxpayer and its management company.

STATEMENT OF FACTS

The taxpayer entered into an agreement with a management company for the operation and maintenance of the taxpayer's facilities. Under the agreement the management company is responsible for the day to day operation of the taxpayer's facilities for a period of ten (10) years. The taxpayer remains the legal and equitable owner of all its facilities. All of the management company's operating budget comes directly from the taxpayer's budget and all facility related purchases, including but not limited to consumable supplies, maintenance items and capital expenditures less than \$25,000 are made by the management company under the authority of the taxpayer. Capital expenditures above \$25,000 are first approved by the taxpayer. Purchases of expense items which require payments totaling more than \$50,000 per year must be approved by the taxpayer.

The agreement, also, requires the management company to implement a comprehensive training program for its employees at the taxpayer's facilities. In the performance of this contractual obligation the management company rents hotel conference rooms and purchases meals for its employees during training sessions.

In addition, the management company under the agreement is obligated to perform an extensive scope of services including the marketing of the taxpayer's facilities. In compliance with this contractual obligation the management company purchases meals and banquets for marketing and public relation purposes.

In addition, conference rooms are rented for public hearings when office space is insufficient to conduct public hearings.

DISCUSSION

IC 6-2.5-5-16 provides:

Transactions involving tangible personal property, public utility commodities, and public utility service are exempt from the state gross retail tax, if the person acquiring the property, commodities, or service:

- (1) is the state of Indiana, an agency or instrumentality of the state, a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state, including a county solid waste management district or a joint solid waste management district established under IC 13-21 or IC 13-9.5-2 (before its repeal); and
- (2) predominately uses the property, commodities, or service to perform its governmental functions.

The Department issued two prior rulings to the taxpayer which stated that the taxpayer is a political subdivision of the State of Indiana and the operation of the taxpayer's facilities is a governmental function. Further, the Department ruled that the purchase of meals by the taxpayer that promote trade and commerce at its facilities fall within the ambit of IC 6-2.5-5-16 and, therefore, is exempt from sales/use tax. The Department, also, ruled that the management company's purchases of tangible personal property that are made on behalf of the taxpayer as agent for the taxpayer that are used predominately to perform the taxpayer's governmental function of operating its facilities are exempt from sales/use tax. For the management company to be considered an agent of the taxpayer the following conditions must be satisfied:

1. the management company must identify itself as an agent of the taxpayer when purchasing the goods and services. Failure to so identify itself will forfeit any available exemption; and
2. title to the goods and services must pass immediately upon acquisition to the taxpayer. It is suggested that to avoid future problems in this area that specific wording be used to state this alleged fact.

In the instant case, the purchase by the taxpayer and the management company when acting as agent for the taxpayer of meals and banquets used for marketing the taxpayer's facilities, and the rental of hotel conference rooms used for marketing the taxpayer's facilities are not subject to sales/use tax. The rental of hotel conference rooms for employee training and for public hearings by the taxpayer and the management company when acting as agent for the taxpayer is not subject to sales/use tax. The purchase of meals for employees in training by the taxpayer and the management company when acting as agent for the taxpayer is, however, subject to sales/use tax as the purchase is not deemed to be necessary for the taxpayer to perform its governmental function.

RULING

The Department rules that the purchase by the taxpayer and the management company when acting as agent for the taxpayer (see above "Discussion" for conditions of agency) of meals and banquets used for marketing the taxpayer's facilities, and the rental of hotel conference rooms used for marketing the taxpayer's facilities are not subject to sales/use tax. The rental of hotel conference rooms for employee training and for public hearings by the taxpayer and the management company when acting as agent for the taxpayer is not subject to sales/use tax. The purchase of meals for employees in training by the taxpayer and the management company when acting as agent for the taxpayer is, however, subject to sales/use tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Department of State Revenue